

DEFENDANT'S EXHIBIT 7

ORIGINAL

1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MARYLAND
3

4 JLB REALTY, LLC, :

5 Plaintiff, :

6 vs. :

CASE NO.

7 CAPITAL DEVELOPMENT, LLC, :

1:09-cv-00632-BEL

8 Defendant. :
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10 Deposition of PAUL JOHNSTON, as

11 Corporate Designee pursuant to Rule 30(b)(6) for

12 JLB Realty, LLC, taken on Friday, August 14,

13 2009, at 9:40 a.m., at the law offices of Sellman

14 & Hoff, 201 North Charles Street, Baltimore,

15 Maryland, before Paul A. Gasparotti, Notary

16 Public.
17 -----

18
19
20 Reported by:

21 Paul A. Gasparotti

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1 **was going to fight us over the earnest money if**
 2 **we chose to execute the contractual right that we**
 3 **had, and so we decided at that point that it was**
 4 **time to terminate the project.**

5 **Q.** You told me there was a list of reasons,
 6 and you proceeded to say that you were advised
 7 that you had the contractual right to terminate,
 8 and I assume that was advice from counsel?

9 **A. As well as my opinion.**

10 **Q.** As well as your opinion, fine. My
 11 question to you is, what were the reasons why you
 12 exercised that contractual right?

13 **MR. PRISBE:** Objection. I think he just
 14 answered.

15 **A. I just answered that.**

16 **Q.** Well, you proceeded to give me sort of a
 17 laundry list of every reason under the sun. I'm
 18 asking what in your mind drove the decision that
 19 we are going to terminate this contract?

20 **MR. PRISBE:** Objection to form and
 21 foundation, and I believe it's been asked and

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1 answered.

2 **A. I mean, in my mind I described, and in**
 3 **my opinion the issues involved were basically, in**
 4 **any business you make a decision based off risk**
 5 **and reward, and you look at what do you feel like**
 6 **you could deliver, and this project was not a**
 7 **certain deliver, so to speak. We had a million**
 8 **dollars up at risk that the seller had already**
 9 **told us he was going to fight us over. I'm of**
 10 **the opinion then, as of now, and received counsel**
 11 **then and now that we still maintain the**
 12 **contractual right to terminate this project and**
 13 **receive the earnest money refund. So we made the**
 14 **business decision to terminate the project,**
 15 **recoup the million dollars with the intent of**
 16 **still negotiating with the seller if he was still**
 17 **willing to, to see if there was a project to be**
 18 **had, to be developed.**

19 **Q.** When was the decision made to terminate
 20 the contract and recoup the earnest money?

21 **A. There was no exact date in my mind that**

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1 **I recall. There had been discussion about**
 2 **terminating probably since the beginning of the**
 3 **latter part of the fourth quarter of last year.**

4 **Q.** So in the November-December time frame?

5 **A. Right. And then I called Gary in**
 6 **December, I don't know the exact date, and**
 7 **instructed him to terminate the contract.**

8 **Q.** Do you know when in December?

9 **A. No.**

10 **Q.** Now, was this a decision by you or a
 11 decision by the board?

12 **A. It was a decision that was discussed**
 13 **within the executive group. I was of the opinion**
 14 **that we needed to do it. I received concurrence**
 15 **from others and so I called Gary.**

16 **Q.** And you gave him instructions to
 17 terminate in December?

18 **A. Correct.**

19 **Q.** Do you know when he did in fact
 20 terminate?

21 **A. He went and met with, can I call him**

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1 **Dave?**

2 **Q.** Sure, if you're willing to.

3 **A. He met with Dave in late December and**
 4 **relayed that news that there was an intent to**
 5 **terminate. He did not terminate the contract as**
 6 **he had been told to. He started having some**
 7 **discussions I think with, or I know with Bay,**
 8 **about trying, instead of terminating,**
 9 **renegotiating the entire basic purchase**
 10 **structure, and so the termination didn't happen.**

11 **Q.** Do you know why Gary did not follow your
 12 instructions?

13 **A. No.**

14 **Q.** Were you aware of it at that time, in
 15 late December, early January, were you aware that
 16 Gary had not followed your instructions to
 17 terminate the contract?

18 **MR. PRISBE:** Objection to form to the
 19 extent it's vague. You can answer.

20 **A. Yes.**

21 **Q.** Did you talk with him about that?

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